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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

PEOPLE ex rel. DEPARTMENT OF TRANSPORTATION, Plaintiff and Respondent, v. TODD HENRY JARVIS, Defendant and Appellant.	H043737 (Monterey County Super. Ct. Nos. M98920, M98921)

In these eminent domain actions (Code Civ. Proc., § 1230.010 et seq.),[1] respondent State of California, Department of Transportation (hereafter "the State" or "Caltrans") condemned portions of two parcels of land that abut State Highway 101 in Salinas for a highway improvement project. The question of just compensation for the taking—which included compensation for the property taken (§ 1263.310) and severance damages (compensation for any injury to the remainder (§ 1263.410) reduced by the amount of any benefit to the remainder (§ 1263.430))—was tried to a jury. The jury found no benefits from the project and awarded severance damages in an amount that was less than what property owner Todd Jarvis claimed. Jarvis appeals the judgment. His primary contention on appeal is that the trial court erred when it allowed the State's expert appraiser to testify about the damages to and the benefits of the project to the remainder because the expert failed to assign a specific dollar value to those components

[1] All undesignated statutory references are to the Code of Civil Procedure.

of the award, and opined simply that benefits outweighed damages. Jarvis argues that the expert's opinion was speculative and unsubstantiated and that the trial court erred when it denied his motion to strike and his motion for directed verdict based on the expert's failure to quantify severance damages and benefits. He asserts the trial court erred in permitting a Caltrans employee to testify regarding the purported benefits of the project because the employee did not meet the requirements of Evidence Code section 813 to give an opinion regarding value and was not properly disclosed as an expert witness. He also challenges the sufficiency of the evidence to support the jury's verdict. We find no error and will affirm the judgment.

I. FACTS AND PROCEDURAL HISTORY

A. Background Information Regarding Properties at Issue

The properties at issue were at one time among the assets of the Jarvis Replacement Administrative Trust (the Trust), which was the subject of litigation in the probate court (Monterey County Superior Court case No. P31598). The properties were also the subject of two partition actions and an appeal in this court (*Jarvis v. Jarvis* (2019) 33 Cal.App.5th 113 (*Jarvis*)). Brothers Todd Jarvis and James Jarvis[2] were the beneficiaries of the Trust. The Trust's primary assets consisted of real property in Salinas: the Jarvis Ranch (333.5 acres of farmland on the west side of U.S. Highway 101) and two parcels that are adjacent to one another (approximately three acres in a residential area on the east side of Highway 101). For ease of reference, we will refer to the two parcels on the east side of the highway as the "Two Parcels."

In May 2009, the State filed three eminent domain actions in Monterey County Superior Court (case Nos. M98919, M98920 & M98921) to acquire portions of the Jarvis Ranch and the Two Parcels for a state highway project known as the Prunedale

[2] For ease of reference, we will refer to the brothers by their first names. James is not a party to this appeal.

Improvement Project (the Project). In March 2010, the trial court issued orders allowing Caltrans to take possession of the condemned properties, pending a determination of the value of the property, severance damages to the remainder, and other issues. The eminent domain actions were subsequently ordered consolidated under case No. M98919. While the eminent domain actions were pending, the Jarvis Ranch was sold to a third party, who settled the eminent domain action as to that property (case No. M98919). The eminent domain actions as to the Two Parcels were tried before a jury in April 2016. This appeal is taken from the judgment entered after that trial. As noted, the Two Parcels are also the subject of two partition actions (Monterey County Superior Court case Nos. 12CV001295 and 16CV002928), which are described in *Jarvis, supra,* 33 Cal.App.5th at pages 123-124.

The first of the Two Parcels is located at 2357 North Main Street in Salinas in an area that is predominantly residential. Before the Project, it was 1.096 acres in size with a cone-like or triangular shape. It is improved with three older houses, a garage, and a water tower. James alleges the improvements " 'suffer from a great deal of deferred maintenance.' " (*Jarvis, supra,* 33 Cal.App.5th at pp. 122-124.) In *Jarvis,* this court referred to this parcel as the "Improved Property," and we adopt that designation here. (*Id.* at p. 122.) Todd and James (individually and as trustee of two trusts) own the Improved Property as tenants in common. (*Ibid.*)

The second of the Two Parcels is located at 2381 North Main Street in Salinas. It is immediately adjacent to and south of the Improved Property. In *Jarvis,* this court referred to this parcel as the "Adjacent Property," and we shall do the same here. (*Jarvis, supra,* 33 Cal.App.5th at p. 122.) The Adjacent Property was originally two acres in size; it is more rectangular in shape than the Improved Property. It is vacant land and provides no income. (*Ibid.*)

The Two Parcels have been in the Jarvis family for a number of generations and eventually passed to James and Todd's parents, who formed a limited partnership known

as Jarvis Properties (the Partnership). "The purpose of the limited partnership was to 'engage in the investment in real property' and its primary asset was the Adjacent Property. Ownership of the Partnership changed over time. At all times relevant to this [appeal], Todd and James each owned 50 percent of the general and limited partnership interests in Jarvis Properties." (*Jarvis, supra,* 33 Cal.App.5th at p. 122, fn. omitted.) James holds his 50 percent share individually and as trustee of various trusts. (*Id*. at p. 122, fn. 4.) During much of the trust litigation and the litigation of the eminent domain actions, "the Two Parcels were 'wholly controlled' by the trustee, [John] McDonnell. In September 2015, the trustee relinquished control of the Two Parcels to Todd and James." (*Id.* at p. 122.)

B. Evidence Presented at Trial

The sole issue at trial was the amount of just compensation for the taking of portions of the Two Parcels for the Project. Both the State and Todd presented expert witness testimony from licensed appraisers on the issue of just compensation. John Nicolaou testified on behalf of Todd, and Ralph Anthony Brigantino testified for the State. The State also relied on the testimony of three Caltrans employees to describe the Project.

1. Testimony of Caltrans Employees

David Silberberger had worked for Caltrans for nearly 30 years. He was a licensed engineer and had been a project manager for 16 years; he was the project manager for the Project. U.S. Highway 101 (hereafter "the Freeway") runs generally from north to south over the entire length of Monterey County and beyond. According to Silberberger, the Project consisted of highway improvements along nine miles of the Freeway, from the Crazy Horse Canyon area in Prunedale in the north to the Boronda Road exit in Salinas in the South. The Project included the construction of three new interchanges, an overcrossing, and an undercrossing. The new interchange at Sala Road—which is approximately one mile north of the Two Parcels—and the new

undercrossing connecting Russell and Espinosa Roads—which is 800 feet north of the Improved Property—are relevant in this case. The purpose of the project was to improve safety and traffic operations and flow.

The Two Parcels are located on the east side of the Freeway south of its intersection with Russell Road and Espinosa Road. Russell Road runs east to west on the east side of the Freeway, and Espinosa Road runs east to west on the west side of the Freeway. Before the Project, access between Russell Road and Espinosa Road was blocked by the Freeway; eastbound traffic on Espinosa Road could not cross the freeway to get to Russell Road and vice versa. The northbound freeway lanes—which abutted the Two Parcels—included on- and off-ramps at Russell Road. Northbound freeway traffic could access Espinosa Road and destinations on the west side of the Freeway by using a very long left-turn pocket and turning left in front of fast-moving southbound traffic. Silberberger described this condition as "less than desirable" and testified that it created safety and operational issues at this location. Southbound freeway traffic could exit at Espinosa Road and travel to the west, but could not get to Russell Road on the east side of the Freeway. To get to the Two Parcels, southbound freeway traffic had to continue south to the exit at Boronda Road, cross over the Freeway, and then travel north on North Main Street, a distance of approximately two miles.

Before the Project, the Freeway was "at grade" with nearby properties, including the Two Parcels and the Jarvis Ranch. The Project removed the at-grade intersection at Russell and Espinosa Roads; eliminated the left-turn pocket; elevated the Freeway adjacent to the Two Parcels so that it passes over Russell and Espinosa Roads; created an undercrossing that connects Russell and Espinosa Roads and permits traffic to cross freely under the Freeway; and widened the Freeway. To elevate the Freeway and create the undercrossing, Caltrans brought in fill, constructed a retaining wall around the fill that abuts the Two Parcels and other properties, and built a sound wall on top of the retaining wall. Caltrans removed the on- and off-ramps at Russell Road and created a new

interchange at Sala Road, three-quarters of a mile to a mile north of the Two Parcels. Both northbound and southbound traffic can now access the Two Parcels from the interchange at Sala Road.

Before the Project, the Two Parcels and the Freeway lanes were separated by a chain link fence and state-owned buffer property. To construct the Project, Caltrans condemned property from approximately 120 parcels along its freeway right of way, including a "a small sliver" of land from the Two Parcels equal to 0.16 acres. This included 0.03 acres (1,307 square feet) from the Improved Property and 0.13 acres (5,663 square feet) from the Adjacent Property. This was approximately five percent of the total area of the Two Parcels.

During the planning process, Caltrans reached out to the community about the Project; it held an open house and sent out questionnaires to obtain community input, including on the question whether to install sound walls. Caltrans took possession of the 0.16 acres from the Two Parcels in April 2010.

Silberberger testified that the Project benefitted the Two Parcels in two ways. First, it opened up access to the west at Russell and Espinosa Roads. Second, the installation of the sound walls reduced freeway noise. Before the Project, the property was subject to unimpeded freeway noise, including from trucks traveling 65 to 70 miles per hour. On cross-examination, Silberberger admitted he was not an acoustical engineer and was unable to quantify the sound benefit. He did not know whether anyone ever studied whether traffic noise from North Main Street is trapped on the Two Parcels by the sound wall. He agreed that travelers can no longer see the Two Parcels from the Freeway. On redirect, he stated that it does not take a sound engineer to know that a sound wall prevents sound from getting through.

Matthew Goetz had worked for Caltrans for 18 years. He was a senior transportation surveyor, licensed by the State. He testified that pursuant to a 1969 order of condemnation by which the State acquired property owned by the Jarvis family to

make previous improvements to Highway 101 (see also *People ex rel. Department of Public Works v. Jarvis* (1969) 274 Cal.App.2d 217 (*Public Works v. Jarvis*)), the Jarvises did not have any rights of access to the highway from the western boundary of the Two Parcels (the area included in the most recent "take").

Kirsten Merriman was an environmental planner generalist for Caltrans; she worked on the Project. Her duties included coordinating the technical studies and writing compliance documents. She testified that before construction, Caltrans identified three areas in the Project for possible installation of sound walls, including the area where the Two Parcels are located. Sound studies were done. After determining that sound walls were both reasonable and feasible in those areas, Caltrans sent out questionnaires to determine whether the property owners and residents of the affected areas wanted sound walls installed. Installation of sound walls required a showing that 50 percent of the affected properties wanted them. A copy of the blank questionnaire was received in evidence. The questionnaire described the height and length of the sound wall, and noise levels; included a design for the sound wall; and acknowledged that the walls would block light and affect a property's visibility from the highway. Merriman did not know of any post-construction noise studies being done on the Two Parcels.

2. Undisputed Expert Witness Testimony Regarding Valuations

The experts agreed on several points. Both experts were asked to determine the amount of just compensation for taking a portion of the Two Parcels for the Project. The parties agreed that the date of valuation was June 8, 2009. Although the experts described three different methods used in eminent domain cases for determining the value of the property, they both used the same method: the sales comparison approach, which essentially involves an analysis of comparable sales around the time of valuation. While the experts relied on different comparables in their analyses, they agreed that the value of the property on June 8, 2009 was $12 per square foot. The amount of property taken was

also undisputed: 1,307 square feet from the Improved Property and 5,663 square feet from the Adjacent Property. Brigantino opined that the value of the property taken from the Improved Property was $15,684 (1,307 square feet times $12 per square foot). Nicolaou agreed with that number, but rounded it up to $15,700, which is common in appraisal practice. Brigantino concluded that the value of the property taken from the Adjacent Property was $67,956 (5,663 square feet times $12 per square foot). Nicolaou agreed, but rounded that number up to $68,000. The jury awarded $15,700 and $68,000 for the property taken. These awards are not challenged on appeal.

Since this case involved a partial taking, the experts were asked to evaluate damages to the portion of the property that was not taken. "When 'the property acquired [by eminent domain] is part of a larger parcel,' in addition to compensation for the property actually taken, the property owner must be compensated for the injury, if any, to the land that [the property owner] retains," which is known as the "remainder." (*City of San Diego v. Neumann* (1993) 6 Cal.4th 738, 741, 745 (*Neumann*) citing Cal. Const., art. I, § 19; U.S. Const., 5th Amend.; and § 1263.410, subd. (a).) "Such compensation is commonly called severance damages." (*Neumann*, at p. 741.) Severance damages are normally "measured by comparing the fair market value of the remainder before and after the taking. [Citations.]" (*Id.* at p. 745.)

The experts were also asked to evaluate whether the Two Parcels had received any benefits from the Project. The Eminent Domain Law (§§ 1230.010 et seq.) provides that "[c]ompensation for injury to the remainder is the amount of the damage to the remainder reduced by the amount of the benefit to the remainder. If the amount of the benefit to the remainder equals or exceeds the amount of the damage to the remainder, no compensation shall be awarded" for injury to the remainder. (§ 1263.410, subd. (b).) Moreover, "such excess . . . shall not be deducted from the compensation required to be

awarded for the property taken or from the other compensation required by this chapter."[3] (*Ibid.*) Thus, the State was entitled to offset the amount of any benefit from the Project to the remainder against the amount of any damages to the remainder. While the experts agreed on the value of the property taken, their opinions differed on the question of severance damages and benefits to the remainder.

3. Testimony of Todd's Appraisal Expert, John Nicolaou

Todd's expert, Nicolaou, had been a real estate appraiser for almost 36 years and was a real estate agent before becoming an appraiser. He was licensed as a certified general real estate appraiser by the State of California in 1993. This type of license allowed him to appraise any type of property, commercial or residential. Nicolaou was an associate member of the Appraisal Institute, a professional organization of appraisers, and has served on the board of his local chapter. He started, but never completed, the requirements to become a Member of the Appraisal Institute (MAI). Before the State started licensing appraisers in the 1990's, the MAI designation was an important indicator of competence.

Nicolaou's work as a consulting appraiser included a "heavy concentration in eminent domain work." He has been retained as an appraisal expert in eminent domain cases by both public entities and property owners. In the decade before trial, 10 to 12 percent of his eminent domain work was done for public entities; the rest of the time, he represented private parties. Although his office was in Fair Oaks, he had appraised properties in 50 of California's 58 counties, including Monterey County, as well as in

[3] The chapter reference in subdivision (b) of section 1263.401 is to chapter 9 (§§ 1263.010 to 1263.770) of the Eminent Domain Law, which governs compensation in eminent domain actions. Section 1263.410, subdivision (b) also provides that "such excess shall be deducted from the compensation provided [for loss of goodwill], if any . . . ." Since there was no claim for loss of goodwill in this case, that portion of the statute does not apply.

Nevada and Arizona. He qualified as a real estate appraisal expert in various trials 17 times, but had never testified as an expert in real estate valuation in Monterey County before. This case was his only commercial appraisal in Monterey County in five years. The last time he testified in an eminent domain case was in 2011.

Todd asked Nicolaou "to appraise the fair market value" of the Two Parcels and "any damages and benefits to the remainder." Nicolaou explained that an appraisal in an eminent domain action is different from appraisals in other contexts. The appraiser must determine the highest and best use of the property and the highest price the property owner can obtain for that use. Nicolaou discussed the definition of fair market value in section 1263.320, subdivision (a), which provides: "The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available."

Price per square foot is commonly used as a unit of comparison for appraising commercial properties. To determine the fair market value of the Two Parcels, Nicolaou considered the legal and permissible uses by examining their zoning and the city's general plan. He looked at the physical components of the property, including size, shape and topography and considered whether it was financially feasible to develop the properties. The most desirable features of the Two Parcels before the Project were their proximity to and visibility from the Freeway, which Nicolaou described as their "highway identity" or "highway influence." In the "before condition," the properties could be seen from both the southbound and northbound freeway lanes, "from every point along the highway." Northbound travelers could see the Two Parcels as they approached the exit at Russell Road; there is a bend in the Freeway south of the Two Parcels and drivers could see the properties around the bend. Both freeway travelers and

local customers would notice this location. Such highway properties command the highest prices and the highest rents. Nicolaou considered the fact that travelers could not access the Two Parcels from the southbound freeway lanes a negative attribute of the property. The least desirable feature of the Improved Property was its cone shape and the fact that its driveway entrances passed over state-owned land.

The northern city limit was at Russell Road; the Two Parcels were located at the northern entrance to the city, in a "gateway overlay" area. This area provided a first impression when people entered the city and a last impression as they departed. The city's most intense commercial usage was a mile south of the Two Parcels at Boronda Road, where there were two shopping centers and an auto mall. The Two Parcels were surrounded predominantly by agricultural property to the west and north and high density residential (condominiums, apartments, and mobile home parks) on the east and south. There was one office building across the street. Each of the Two Parcels had two driveway access points from North Main Street; there were no sidewalks, just a curb and gutters. To get onto the Improved Property, one had to cross from North Main Street over State-owned land.

Nicolaou investigated both the city's general plan and the zoning for the Two Parcels. According to the then-current general plan, which was adopted in 2002, the property was designated for retail, commercial, and office uses. It thus had been zoned commercial/retail with a gateway overlay. Potential uses of the property included retail stores; hotels or motels; restaurants; commercial recreational uses; personal, business or financial services; and mixed use residential/commercial. The houses on the Improved Property were 50 to 60 years old and were not compatible with current zoning. The rent collected paid the bills for the property. Nicolaou concluded the houses did not add any value and any buyer for the highest and best use would demolish them.

In identifying comparable sales, Nicolaou looked for properties that had highway influences; highway identity "[was] a huge factor." He looked at actual sales around the

valuation date and applied his appraisal judgment to determine which were the most comparable sales. He selected seven comparable sales between December 2006 and October 2010 in Prunedale and Salinas. He described the features of each comparable to the jury, compared the characteristics of each comparable to those of the Two Parcels, and then determined whether the comparables were inferior to, similar to, or superior to the Two Parcels. Generally, he opined that properties that did not have highway visibility were inferior to the Two Parcels. The prices on the comparables Nicolaou selected ranged from $6.29 per square foot to $15.65 per square foot. Based on his analysis, he concluded the Two Parcels were both worth $12 per square foot before the taking. He opined that the highest and best use of the property was "retail commercial" or mixed use retail/residential.

After determining the value of the property before the taking, Nicolaou analyzed their value after the taking, using the same seven comparables. He did a separate appraisal considering the project and its features as built. Nicolaou testified that several factors reduced the value of the property after the Project was built. The combined height of the retaining wall and the sound wall ranged from 6.5 feet to 37 feet. Because of the elevated roadway and the sound wall, the Two Parcels, including the 28-foot high water tower, were no longer visible from the Freeway; the only thing identifying the property were the tops of some trees. Thus, the properties lost their highway identity. Their proximity to the highway had changed, their highway visibility was extinguished, and their highway identity had disappeared. Nicolaou did not think this could be mitigated by putting up a monument sign.[4]

The elevated freeway lanes and the wall on the west side of the property cast a shadow on the property. Before the Project, one could see the highway at grade and

[4] A monument sign is an exterior, freestanding sign that is not affixed to a building that identifies the occupant or occupants of the building.

agricultural property on the west side of the Freeway, including the Jarvis Ranch. After the Project, the rising elevation of the retaining wall and sound wall blocked the view across the highway to the west. Sunsets were no longer visible and any buyer would find the wall imposing. Nicolaou said the wall was comparable to the "Green Monster at Fenway" Park and taller than the average height of the Great Wall of China, which can be seen from space. On cross examination, Nicolaou agreed that one could still see agricultural land to the west from the property line between the Improved Property and the Adjacent Property.

After the Project, the on- and off-ramps at Russell Road, which provided easy access to the property, were gone and the nearest freeway interchange was one mile north at Sala Road. The buffer area between the Two Parcels and the Freeway no longer existed and the freeway lanes were closer to the property. According to the city's general plan, Salinas wanted to preserve agricultural views as one entered the city. Nicolaou did a qualitative analysis, comparing the features of the Two Parcels after the Project to those of the comparables he used before and concluded that the value of the property after the Project had been reduced to $9 per square foot.

Nicolaou opined that there was no quantifiable benefit from the Project. He did not think the new interchange at Sala Road provided any benefit because it was a mile away. Nicolaou reviewed noise studies that were done by Caltrans before the Project was built. These preliminary studies assumed there would be a reduction in noise, but even the reduced levels anticipated in the studies exceeded noise levels in the city's general plan for residential uses. He stated the preliminary studies found noise levels at 77 decibels at the worst hour; Caltrans expected the noise level would be reduced to 69 by the sound wall, and the threshold for residential development is 67. Nicolaou did not know what the actual noise levels were after the Project was completed.

Nicolaou concluded that the value of remainder for the Improved Property was $557,300 (46,435 square feet times $12 per square foot) before the Project and $418,000

(46,435 square feet times $9 per square foot) after the Project and that severance damages (the difference between the two) were $139,300. Applying a similar calculation, he concluded that the value of remainder on the Adjacent Property had been reduced from $978,000 to $733,000, and that the severance damages were $245,000. Adding these amounts to the value of the property taken, he opined that just compensation was $155,000 for the Improved Property and $313,000 for the Adjacent Property, for a total of $468,000.

On cross-examination, Nicolaou stated that the zoning for the Two Parcels permitted a large variety of residential uses, but that the city would require conditional use permit and noise mitigation. The gateway overlay did not preclude residential development there. He stated it was unlikely that retail or fast food uses would expand into the agricultural areas around the Two Parcels. He was retained in the fall of 2015, and never saw the properties before the Project was built.

4. Testimony of the State's Expert, Ralph Anthony Brigantino

At deposition, Brigantino testified that there were both damages and benefits to the Two Parcels after the Project was built. He did not assign a dollar value to either damages or benefits, but testified that the benefits clearly outweighed the damages and that severance damages were therefore zero. Before Brigantino testified at trial, Todd moved to exclude his testimony, arguing that he had failed to properly quantify the damages and benefits to the Two Parcels, that his testimony was irrelevant, speculative, and would not assist the jury. The trial court denied the motion.

Brigantino had been a real estate appraiser for 32 years. He had the same license as Nicolaou. Brigantino was a member of the Appraisal Institute and had obtained the MAI credential; he described the "rigorous process" for obtaining the MAI, which takes an average of eight years. He served as president of the Monterey chapter of the Appraisal Institute and as a director of the Northern California chapter. He was a

licensed real estate broker and invested in real estate. He knew a lot of real estate investors and buyers in Monterey County and had relationships with all the commercial brokers in that market. Brigantino was qualified as an expert witness by the superior courts in Monterey and four other counties. He had testified in Monterey County Superior Court six times before; including one prior eminent domain case for Caltrans. He had been disclosed as an expert witness in 12 eminent domain cases; in about half of those, he was retained by Caltrans. He had been retained by landowners in eminent domain cases many times.

The State retained Brigantino to appraise the Two Parcels and determine just compensation, including the value of "the take," and both severance damages and benefits to the remainder. Brigantino had driven by the Two Parcels hundreds of times and examined the properties both before and after the Project was built. Rather than evaluate the properties separately as Nicolaou had done, Brigantino evaluated them as a single unit. He applied the same legal and appraisal standards that Nicolaou used.

The area surrounding the Two Parcels was primarily residential, with mobile home parks, condominiums, single-family homes, apartments, and vacant land. The older houses on the Improved Property were not in good condition. Brigantino opined that the Two Parcels were not desirable for commercial/retail development because the whole area between North Main Street and the Freeway where they were located was blighted. Like Todd's expert, Brigantino concluded that the value of the properties before the taking was $12 per square foot. He relied on four comparable sales, at least three of which were different from the comparables Nicolaou selected.[5] The evidence included a separate exhibit for each of Brigantino's comparables, setting forth his analysis of those properties and the features he considered, as well as a chart he prepared summarizing all

[5] The record does not include all of the trial exhibits. Based on the testimony, it appears one of Brigantino's comparables may be the same as one of Nicolaou's comparables, but that is not entirely clear.

of the comparables and the adjustments he made as a part of his appraisal. The sales prices for his comparables ranged from $17.50 per square foot to $12.08 per square foot. Unlike Nicolaou, freeway visibility was not a key factor for Brigantino; it did not have much impact on his valuation. He agreed that for commercial purposes, there is a benefit from being seen from the freeway. Such visibility is a good thing in a thriving market, but the real estate market "fell off a cliff" in 2008 and "was dead" in 2009.

Although the property was zoned "commercial retail," other uses are permitted in such zoning, including several types of multi-family residential uses, hospitals, day care centers, schools, and government offices. Brigantino opined that the wall could be a positive feature for some uses because it provided a "protected feel" to the property. Before the Project, the properties were separated from the Freeway by a barbed wire fence, and semi-trucks were not too far away. Initially, he thought the wall would be a detriment overall, but seeing it as built and considering all of the properties' characteristics, the fact that the properties were no longer visible from the Freeway could benefit some uses. While some uses were diminished by the wall and lack of visibility from the highway, many permitted uses could benefit from it.

Brigantino talked to local agencies and examined local ordinances and determined that monument signs would be permitted on the property. Depending on the use, a sign could mitigate any loss of visibility; he did not analyze whether it would completely negate the negative aspects of the wall. He did not recall seeing any noise studies; he did not consider noise restrictions in his analysis. He had never heard of a "gateway overlay" in this area. Although Brigantino said he had an opinion regarding the highest and best use for the Two Parcels, neither attorney asked him what that was.

Brigantino concluded that whatever damage the wall caused was "far offset" by improved access to the properties with the new undercrossing at Russell and Espinosa Roads. One could now travel west from the Two Parcels directly to Castroville and the Monterey Peninsula and vice versa. The old interchange was dangerous and drivers

could not travel west from Russell Road. Access north and south was also improved with the new interchange at Sala Road, less than a mile away. Before the Project southbound travelers had to drive two miles from Espinosa Road, through a congested area on Boronda Road, to get to the Two Parcels; after the Project, it was less than a mile from Sala Road to the properties. Most buyers would consider these improvements a benefit, and the improved traffic circulation far offsets the damage caused by the wall. After analyzing severance damages and benefits, Brigantino found them offsetting and concluded there were no net severance damages. He could have prepared "a bunch of charts and another set of comparison tables," but that was not necessary because the conclusion seemed really clear to him, "just kind of a no-brainer."

In his written report, Brigantino stated that severance damages were zero and benefits were zero. On cross-examination, Todd's counsel asked whether that was an accurate representation of his opinion; Brigantino responded that it was an accurate simplification of his conclusions. Cross-examination focused on the fact that Brigantino had not assigned specific dollar values to either severance damages or benefits. He did not put numbers on those values and did more of a qualitative analysis. He agreed that the sound wall and loss of visibility diminished the value of the property "slightly." He stated that evaluating benefits was a "hard number to come up with" and that it could be a "speculative number." He described other types of appraisals where it is acceptable not to assign a valuation number. He reiterated his opinion that severance damages were outweighed by the benefits. Todd's counsel asked: "So the jury doesn't know if your opinion of severance damages is $10,000 or $1,000,000, right?" Brigantino responded, "Technically, yes, I guess." There was a similar exchange regarding benefits. Brigantino opined that the fair market value of the Two Parcels did not change after the Project was built and remained $12 per square foot. He could have prepared another chart comparing the Two Parcels after the Project was done to his comparables, but that chart would have

been the same chart he prepared comparing values before the Project was completed. His goal was to keep the analysis and presentation simple.

After Brigantino testified, outside of the presence of the jury, Todd's counsel said he intended to move for a directed verdict. The court deferred hearing the motion until after other testimony was completed. Todd then moved to strike Brigantino's testimony on severance damages. The court denied the motion, stating, "I don't think he needs to put a specific dollar amount to come to the conclusion of the benefits outweighed. I think the complaints generally go more to the weight than the admissibility of the testimony." The court later denied the motion for directed verdict.

5. Verdicts

The jury awarded $15,700 for the Improved Property and $68,000 for the Adjacent Property for the value of the property taken. The jury found the Project did not benefit the properties. It found that severance damages to the remainder were $38,600 for the Improved Property and $95,162 for the Adjacent Property, for a total of $133,762. The total judgment (value of property taken plus severance damages to the remainder for both properties) was $217,462. Todd appeals.

II. DISCUSSION

Todd raises five issues on appeal. First, he asserts the trial court erred in permitting Caltrans employee Silberberger to testify regarding purported benefits to the property because Silberberger did not meet the requirements of Evidence Code section 813, subdivision (a), and was not disclosed as an expert witness in accordance with section 1258.250. Second, he contends the trial court erred when it allowed the State's expert appraiser, Brigantino, to testify about severance damages and benefits, over his objection, because the expert failed to quantify (assign a specific dollar value to) both severance damages and benefits, and opined simply that benefits outweighed damages. Third, he asserts the trial court erred in denying his motion for directed verdict based on

Brigantino's failure to quantify severance damages and benefits. Fourth, he contends that because Brigantino's opinion was purely speculative and unsubstantiated, the trial court erred when it denied his motion to strike and his motion for directed verdict. Fifth, Todd argues that the jury's verdict—which agreed with Todd's expert and found no benefits, but awarded severance damages that were less than what Todd's expert testified to—was not supported by substantial evidence or made in compliance with the law. As a remedy, Todd asks this court to reverse the judgment and remand with instructions for the trial court to enter a new judgment based on his expert's testimony regarding the amount of severance damages. In other words, he seeks an order directing the trial court to increase the judgment from $54,300 to $155,000 for the Improved Property and from $163,162 to $313,000 for the Adjacent Property.

A. General Principles Regarding Eminent Domain Trials

The United States and California Constitutions guarantee just compensation, ascertained by a jury, for property taken by a public entity in eminent domain. (Cal. Const., art. I, § 19; U.S. Const., 5th Amend.) The measure of just compensation "is the fair market value of the property taken." (§ 1263.310.) "[T]axpayers should not be required to pay more than reasonably necessary for public works projects. Stated another way, compensation for taking or damage to property must be just to the public as well as to the landowner." (*Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp*. (1997) 16 Cal.4th 694, 716.)

In an eminent domain action, "neither the plaintiff nor the defendant has the burden of proof on the issue of compensation" except as otherwise provided by statute (§ 1260.210, subd. (b)). "Subdivision (a) [of section 1260.210] articulates a *burden of production*, which is merely the burden of going forward with (or producing) some evidence of a material fact. [Citations.] . . . Once that burden has been satisfied, however, subdivision (b) makes it clear that neither party bears a particular *burden of*

persuasion with respect to convincing the trier of fact that the reasonable probability exists or what effect such probability would have on the valuation of the property." (*Metropolitan Water Dist. of So. California v. Campus Crusade for Christ, Inc*. (2007) 41 Cal.4th 954, 969 (*Metropolitan*).) "Thus, both the landowner and the condemning entity offer evidence as to property valuation. The jury's award for the value of the real property must be 'within the range of expert testimony if such testimony is the only substantial evidence in the case.' [Citations.]" (*Redevelopment Agency v. Thrifty Oil Co*. (1992) 4 Cal.App.4th 469, 474 (*Thrifty Oil*).)

Just compensation includes severance damages when the property taken is part of a larger parcel, as was the case here. Severance damages are defined by statute. (§§ 1263.410-12643.430.) Since the relevant sections are "part of the statutory scheme to carry out the constitutional mandate that just compensation be given for the taking of private property for public use ([citations]), it is also a matter of constitutional import." (*Los Angeles v. Wolfe* (1971) 6 Cal.3d 326, 330.)

As we have noted, section 1263.410 provides in relevant part: "(a) Where the property acquired is part of a larger parcel, in addition to the compensation awarded . . . for the part taken, compensation shall be awarded for the injury, if any, to the remainder." "Such compensation is commonly called 'severance damages.' " (*Metropolitan*, *supra*, 41 Cal.4th at p. 965.) Subdivision (b) of section 1263.410 provides: "Compensation for injury to the remainder is the amount of the damage to the remainder reduced by the amount of the benefit to the remainder. If the amount of the benefit to the remainder equals or exceeds the amount of the damage to the remainder, no compensation shall be awarded under this article."

Section 1263.420 defines "[d]amage to the remainder" as "the damage, if any, caused to the remainder by either or both of the following: [¶] (a) The severance of the remainder from the part taken. [¶] (b) The construction and use of the project for which the property is taken in the manner proposed by the plaintiff whether or not the damage is

caused by a portion of the project located on the part taken." Section 1263.430 defines "[b]enefit to the remainder" as "the benefit, if any, caused by the construction and use of the project for which the property is taken in the manner proposed by the plaintiff whether or not the benefit is caused by a portion of the project located on the part taken."

B. The trial court did not err prejudicially when it allowed Silberberger to testify regarding alleged project benefits

Todd contends the trial court erred when it permitted Caltrans project manager Silberberger to testify regarding the benefits of the Project. Todd relies on Evidence Code section 813, subdivision (a) and Code of Civil Procedure section 1258.250.

Evidence Code section 813, subdivision (a) provides: "(a) The value of property may be shown only by the opinions of any of the following: [¶] (1) Witnesses qualified to express such opinions. [¶] (2) The owner or the spouse of the owner of the property or property interest being valued. [¶] (3) An officer, regular employee, or partner designated by a corporation, partnership, or unincorporated association that is the owner of the property or property interest being valued, if the designee is knowledgeable as to the value of the property or property interest." Todd argues that Silberberger, the Caltrans project manager, does not fit into any of these categories since he was neither an expert on valuation nor the property owner. We agree with that point.

But Todd neglects to discuss subdivision (b) of the statute, which provides in part: "Nothing in this section prohibits . . . the admission of any other admissible evidence (including but not limited to evidence as to the nature and condition of the property and, *in an eminent domain proceeding, the character of the improvement proposed to be constructed by the plaintiff*) for the limited purpose of enabling the court, jury, or referee to understand and weigh the testimony given under subdivision (a); . . ." (Evid. Code, § 813, subd. (b).) Subdivision (b) of Evidence Code section 813 "expressly contemplates the admission of any relevant evidence '. . . for the limited purpose of enabling the [trier of fact] to understand and weigh' the opinions of the valuation witnesses." (*State ex rel.*

Public Works Board v. Wherity (1969) 275 Cal.App.2d 241, 249.) Silberberger's testimony generally was admissible under subdivision (b) of the statute since he testified regarding the character of the improvements. In our view, testimony regarding "the character of the improvement" includes whether it provided any benefit to neighboring property. Indeed, his testimony was part of the State's prima facie case, demonstrating the public service and utility of the Project. (See e.g., 1 Condemnation Practice in California (Cont.Ed.Bar 3d ed. 2017) Trial Preparation and Trial, §§ 9.58-9.60, pp. 9-65 to 9-70 [discussing condemnor's prima facie case, the role of the condemnor's engineering witness; and the benefit of his or her testimony to the condemnee].)

Silberberger testified that the Two Parcels benefitted from the Project due to improved access to the west from the new undercrossing and noise reduction provided by the sound wall. He did not assign a value to those benefits. In fact, he testified that he had no opinion regarding the value of any benefits provided by the sound wall. He did not testify regarding the value of the property, the price per square foot, the value of severance damages, or the amount of just compensation. Evidence Code section 813 governs who may testify regarding property value. Since Silberberger did not testify regarding the value of the property, his testimony was not limited by Evidence Code section 813.

Article VI, section 13 of the California Constitution "generally 'prohibits a reviewing court from setting aside a judgment due to trial court error unless it finds the error prejudicial." [Citation.] The section applies to both constitutional and nonconstitutional errors. [Citation.] It 'empower[s]' appellate courts 'to examine "the entire cause, including the evidence," ' and 'require[s]' them 'to affirm the judgment, notwithstanding error, if error has not resulted "in a miscarriage of justice.'' ' [Citation.]" (*F.P. v. Monier* (2017) 3 Cal.5th 1099, 1108.) Even if the trial court had erred in admitting Silberberger's testimony regarding the benefits of the Project, any error was not prejudicial. First, Todd's trial counsel effectively cross-examined

Silberberger and highlighted weaknesses in his opinions regarding benefits. More importantly, the jury did not find the State's evidence of benefits persuasive, since it found there were no benefits from the Project. Todd could not have obtained a better result on the issue. Since we conclude the admission of this evidence was not prejudicial, we shall not address Todd's contention that the evidence was inadmissible because the State failed to comply with the section 1258.250 disclosure requirement.

C. Admission of Brigantino's Testimony Regarding Severance Damages and Benefits of the Project

1. Standard of Review

Todd contends the trial court erred when it admitted Brigantino's unquantified expert testimony on severance damages and benefits. "Except to the extent the trial court bases its ruling on a conclusion of law (which we review de novo), we review its ruling excluding or admitting expert testimony for abuse of discretion. [Citations.] A ruling that constitutes an abuse of discretion has been described as one that is 'so irrational or arbitrary that no reasonable person could agree with it.' [Citation.] But the court's discretion is not unlimited, . . . Rather, it must be exercised within the confines of the applicable legal principles. [¶] 'The discretion of a trial judge is not a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal principles governing the subject of its action, and to reversal on appeal where no reasonable basis for the action is shown.' [Citations.] 'The scope of discretion always resides in the particular law being applied, i.e., in the "legal principles governing the subject of [the] action . . . ." Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an "abuse" of discretion. [Citation.] . . . [¶] The legal principles that govern the subject of discretionary action vary greatly with context. [Citation.] They are derived from the common law or statutes under which discretion is conferred.' [Citation.] To determine if a court abused its discretion, we must thus consider 'the legal principles and policies that

should have guided the court's actions.' [Citation.]" (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773.)

2. Timeliness of Request to Exclude Brigantino's Testimony

The State argues that Todd's motion to exclude Brigantino's testimony—which was made on the sixth day of trial, the same day Brigantino was scheduled to testify—was untimely under the trial court's local rules and failed to provide the State adequate notice that Todd would be requesting an Evidence Code section 402 hearing to exclude Brigantino's testimony. The State urges us to affirm the trial court's order admitting this evidence on this ground alone. Todd responds that the motion was not untimely because California Rules of Court, rule 3.1112(f), permits a motion in limine to be made during trial.

Although the trial court's initial reaction was that it was "a little late to make that request," it ultimately decided the motion to exclude Brigantino's testimony on the merits and denied the motion. Since the State prevailed on the motion, it cannot demonstrate any prejudice from any asserted delay. Following the trial court's lead, we decline to review the timeliness question, and will proceed to the merits.

3. Admission of Unquantified Expert Witness Testimony

Todd asserts that the trial court erred when it allowed Brigantino to testify that the benefits of the Project outweighed severance damages and did not require Brigantino to assign specific dollar values to both severance damages and benefits. Todd argues that valuation testimony that does not provide any numbers does not assist the jury and actually confuses the jury.

We begin by summarizing the valuation evidence. Brigantino prepared two written reports, which were not placed in evidence.[6] Brigantino told the jury that in his

[6] Brigantino's reports were dated December 1, 2014, and January 26, 2016.

written reports, he opined that severance damages were zero and benefits were zero. He testified that he had not assigned a dollar value to severance damages or benefits and that the amounts in his written reports were a simplification of his opinion. He opined that benefits "clearly exceeded" and "far offset" damages and that there were no net severance damages. He testified that the value of the property after the Project had not changed and was still $12 per square foot. This contrasted with Nicolaou's testimony. He valued the property after the Project at $9 per square foot—a reduction of $3 per square foot—and testified that total severance damages were $384,300 and benefits were zero.

Todd acknowledges that the Evidence Code permits an expert to testify on the ultimate issue to be decided by the factfinder. Quoting *WRI Opportunity Loans II LLC v. Cooper* (2007) 154 Cal.App.4th 525, 532, he then states that this rule does not authorize an expert to testify to legal conclusions in the guise of expert opinion. But he does not develop this point further. We understand the argument to be that by allowing Brigantino to testify that the benefits from the Project exceeded severance damages, the court permitted him to testify to an impermissible legal conclusion, rather than provide permissible testimony on the ultimate factual issue to be decided by the jury. We disagree.

Evidence Code section 805 expressly authorizes ultimate issue opinions. It provides: "Testimony in the form of an opinion that is otherwise admissible is not objectionable because it embraces the ultimate issue to be decided by the trier of fact." Such opinions are not automatically admissible, and the trial judge has considerable discretion to exclude them if he or she does not think they will assist the jury. (California Expert Witness Guide (Cont.Ed.Bar 2d ed. 2018) § 5.2, p. 5-5, citing *Carson v. Facilities Development Co.* (1984) 36 Cal.3d 830, 845 and *Schauf v. Southern California Edison Co*. (1966) 243 Cal.App.2d 450, 456.) On the other hand, " '[i]t is thoroughly established that experts may not give opinions on matters which are essentially within the province of

the court to decide.' " (*Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 884; see also *Downer v. Bramet* (1984) 152 Cal.App.3d 837, 842 ["[w]hile in many cases expert opinions that are genuinely needed may happen to embrace the ultimate issue of fact (e.g., a medical opinion whether a physician's actions constitute professional negligence), the calling of lawyers as 'expert witnesses' to give opinions as to the application of the law to particular facts usurps the duty of the trial court to instruct the jury on the law as applicable to the facts"].)

In reviewing this contention, we consider the roles of the trial court and jury in an eminent domain proceeding. In an eminent domain trial, " 'all issues except the sole issue of just compensation . . . are to be tried by the court.' " (*Metropolitan, supra,* 41 Cal.4th at p. 965.) The question of just compensation is a factual issue for the jury to decide. The issues reserved for the trial court in condemnation actions are "issues of law—or mixed issues of law and fact where the legal issues predominate, even if there are also underlying disputes of fact—antecedent to the valuation of the property and the question of severance damages. [Citation.] In such circumstances, reserving the issue for the court is consistent with the state constitutional right to a jury trial on the issue of just compensation and facilitates the conduct of the trial. [Citation.] Once the court performs its role . . . it is for the jury to determine the effect of the impairment, if any, on the property's market value. [Citation.] Similarly, where the property owner produces evidence tending to show that some other aspect of the taking . . . 'naturally tends to and actually does decrease the market value' of the remaining property, it is for the jury to weigh its effect on the value of the property, as long as the effect is not speculative, conjectural, or remote." (*Metropolitan,* at p. 973.) "[T]he property owner bears the burden of producing evidence tending to show the diminution in market value under section 1260.210, subdivision (a) [citation] . . . but the jury then decides what effect (if any) the evidence, taken 'as a whole,' may have on the value of the property." (*Id*. at pp. 973-974.)

Based on these authorities, the question whether benefits exceed severance damages is a factual issue for the jury to determine, not a legal question for the court. And since experts may opine on the ultimate factual issue, the court did not err when it permitted Brigantino to testify that benefits exceeded severance damages. It was for the jury to weigh that testimony and the reasons Brigantino gave to support his conclusion and determine what effect it had on its valuation of the Two Parcels. We therefore reject Todd's contention that by denying his motions to exclude Brigantino's testimony, the court permitted the State's expert to testify to impermissible legal conclusions in the guise of expert opinion.

"The trial court, in exercise of its sound discretion, determines the competency and qualification of an expert witness [citation], and the trier of fact is exclusive judge of the weight to be given to expert testimony. [Citation.] Where it appears that the opinion of a valuation witness is based upon considerations which are proper as well as those which are not, the testimony may be admitted and the trier of fact shall determine its weight and credibility. [Citation.]" (*Ventura County Flood Control Dist. v. Security First Nat. Bank* (1971) 15 Cal.App.3d 996, 1003-1004.) Thus, even assuming it was improper for Brigantino to testify that net severance damages were zero because project benefits outweighed severance damages, that testimony was still admissible and it was up to the jury to determine its weight and credibility. That is what the trial court did here. It correctly found that Todd's objection that it was impermissible for Brigantino to testify about net severance damages goes to the weight of his testimony, not its admissibility.

Section 1260.230 provides that "[a]s far as practicable, the *trier of fact* shall assess separately" (italics added) (1) the compensation for the property taken, (2) the amount of any damages to the remainder, and (3) the amount of any benefits to the remainder. (Italics added; see also section 1263.410, subd. (b).) As Todd notes, the verdict form used in this case complied with that requirement. But nothing in these statutes required the *witnesses* to separately quantify damages and benefits to the remainder. While

section 1260.230 requires the trier of fact to separately assess these components of the damages award, it does not proscribe the type of evidence that may be presented by the witnesses offering opinions regarding the value of the property. While it may arguably have been more helpful to the jury for Brigantino to quantify the amount of damages and the amount of benefits to the remainder, nothing in the section 1260.230 required him to do so.

In an eminent domain case, the jury cannot render a verdict that is "higher or lower than 'that shown by the testimony of the witnesses.' " (*Public Works v. Jarvis*, *supra*, 274 Cal.App.2d at p. 226, citing *People ex rel. Dept. of Public Works v. McCullough* (1950) 100 Cal.App.2d 101, 105, and *Redevelopment Agency v. Modell* (1960) 177 Cal.App.2d 321, 326-327.) *Public Works v. Jarvis*, the 1969 eminent domain case involving the Jarvis Ranch and the Two Parcels, is illustrative. In that case, Caltrans's predecessor, the Department of Public Works, sought to condemn property owned by the Jarvis family for improvements to Highway 101 made over 50 years ago. The case went to trial on the issue of just compensation, including the amount of severance damages. The property owner (Todd and James's father) testified that severance damages were $57,430. He also presented the testimony of two valuation experts who testified that severance damages were $107,100 and $98,000 respectively. The State's expert testified that severance damages were $1,000. (*Id.* at p. 225.) The jury returned a verdict of $124,230 in severance damages, which was higher than what any expert testified to. The jury also found no benefits. (*Id.* at p. 225 & fn. 5.)

On appeal, the State challenged the verdict, arguing that it exceeded the highest figure assigned by any of the four witnesses, which was $ 107,100. (*Public Works v. Jarvis*, *supra*, 274 Cal.App.2d at p. 226.) The court stated that the jury cannot render a verdict that is higher or lower than that shown by the testimony of the witnesses and explained: "This does not mean, in the present case, that the permissible range of the jury's severance-damage figure necessarily lay between the highest and lowest lump-sum

figures given by the witnesses. [¶] Each witness calculated his respective lump-sum figure from several opinion factors of his own, including different per-acre values and acreage figures assigned by him to various areas of the Jarvis ranch both before and after the condemnation . . . . The differences among these factors presented conflicts in the evidence; these were for the jury to resolve [citation], ... The range limiting its severance-damage figure ran up to the highest valid arithmetical combination of factors selected from the testimony of all the witnesses; any verdict less than such highest possible figure was—as this one was—'shown by the testimony of the witnesses' [citations] and, hence, supported by the evidence." (*Id.* at pp. 226-227, fn. omitted.) In a footnote, the court selected different factors from the four witnesses' testimony, and explained how the jury could have found "aggregate severance damages as high as $161,925. The jury's $124,230 figure was not that high: but the point is that it was within the range established by all the testimony." (*Id.* at p. 227, fn. 6.)

In *Contra Costa Water Dist. v. Vaquero Farms, Inc*. (1997) 58 Cal.App.4th 883, 904-905 (*Vaquero Farms*), the appellate court declined to reweigh the evidence or judge the credibility of witnesses. The property owner in that case argued that the jury's award of severance damages was " 'inadequate and not supported by credible evidence.' " Its argument was based on the "unbelievability" of the Water District's witnesses and the asserted proficiency of its own witnesses and was "predicated on the assumption that the jury was bound to award an amount only within the two ranges of valuation. In effect, [the property owner argued] the jury is prohibited from assessing damages anywhere in the middle of the two opposing theories because such an amount cannot be tied to the valuation testimony of any witness." (*Id.* at p. 904.)

The appellate court in *Vaquero Farms* rejected that point. It explained that "*City of Pleasant Hill v. First Baptist Church* (1969) 1 Cal.App.3d 384 [(*First Baptist*)], analyzed a similar argument and upheld the jury's award for severance damage even though there was no testimony relating to the figure returned and no formula suggested

which would produce it. . . . [I]t was argued the jury impermissibly ' " 'cut somewhere in between' " ' the divergent amounts presented by each side. [Citation.] The court rejected this argument: ' "The differences among these factors presented conflicts in the evidence; these were for the jury to resolve . . . . The range limiting its severance-damage figure ran up to the highest valid arithmetical combination of factors selected from the testimony of all the witnesses; any verdict less than such highest possible figure was—as this one was—'shown by the testimony of the witnesses' . . . and, hence, supported by the evidence." ' [Citation.] Other courts have recognized it is within the province of the trier of fact to reconcile conflicting testimony when presented with wide discrepancies in the estimates of value and damage by witnesses for each side. [Citations.] With the evidence in this state, the trier of fact 'may reasonably have deemed unrealistic various factors' upon which the witnesses based their respective valuations. [Citation.] [The property owner] has provided no reason to depart from the reasoning of these cases, and we see no reason to overturn the jury's verdict." (*Vaquero Farms, supra*, 58 Cal.App.4th at pp. 904-905.)

As these cases illustrate, the jury was entitled to weigh not only the experts' ultimate conclusions regarding value, but also the factors they relied on in reaching their opinions. "The value of opinion evidence rests not in the conclusion reached but in the factors considered and the reasoning employed." (*Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1135 (*Zuckerman*).) The factors the jury may have considered in this case include the nature and type of comparable sales each of the experts relied on; the features of each of the comparable properties; the extent and value of the loss of visibility from the Freeway, access to the Freeway, loss of view of farmland to the west; the nature of the surrounding neighborhood, and whether it included a gateway overlay or was blighted; the myriad of permitted uses; and the likelihood of commercial/retail development that would rely on the Two Parcels' highway identity, as opposed to some other use that would not.

Brigantino testified that because the benefits of the Project exceeded damages to the remainder, the amount of net severance damages was zero. Nicolaou valued benefits at zero and damages at $384,300 for both properties. The jury awarded $133,762. Its award was well within the range of values testified to by the experts and established by all of the evidence. Moreover, there was no evidence the jury was confused. There were no questions from the jury, nothing suggested they had difficulty completing the verdict form, and the jury deliberated for three hours and 15 minutes. For these reasons, we reject Todd's contention that the trial court erred when it admitted the testimony of the state's valuation expert that did not separately quantify benefits and damages to the remainder of the Two Parcels.

D. Denial of Todd's Motion for Directed Verdict

Todd contends the trial court erred when it denied his motion for directed verdict. At trial, Todd argued that a directed verdict was appropriate under *Aetna Life & Casualty Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 865 (*Aetna*) because Brigantino failed to separately assign dollar values to severance damages and benefits from the Project. Todd's motion focused on Brigantino's testimony that valuing benefits was a "hard number to come up with" and that it could be a "speculative number." He argued that Brigantino's testimony did not help the jury because the jury will never know if the damages and benefits to the remainder were $10,000 or $1 million. The trial court denied the motion. Todd makes these same arguments on appeal.

1. Nature of Motion for Directed Verdict and Standard of Review

"[A] motion for a directed verdict is in the nature of demurrer to the evidence. [Citations.] In determining such a motion, the trial court has no power to weigh the evidence, and may not consider the credibility of witnesses. It may not grant a directed verdict where there is *any* substantial conflict in the evidence. [Citation.]" (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 629 (*Howard*).) "A directed verdict may be

granted only when, disregarding conflicting evidence, giving the evidence of the party against whom the motion is directed all the value to which it is legally entitled, and indulging every legitimate inference from such evidence in favor of that party, the court nonetheless determines there is no evidence of sufficient substantiality to support the claim or defense of the party opposing the motion, or a verdict in favor of that party. [Citations.]" (*Id.* at pp. 629-630; see also *Magic Kitchen LLC v. Good Things Internat., Ltd*. (2007) 153 Cal.App.4th 1144, 1154; *Newing v. Cheatham* (1975) 15 Cal.3d 351, 358-359 (*Newing*).) The trial court's function in ruling on a motion for directed verdict is analogous to that of a reviewing court in determining on appeal whether there is evidence of sufficient substance to support the judgment. (*Dailey v. Los Angeles Unified School Dist.* (1970) 2 Cal.3d 71, 745; *Howard*, at pp. 629-630.) To avoid a directed verdict, the State's evidence had to be more than a mere scintilla. (*Newing*, at p. 359; *Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1119-1120.) "Thus, if the party resisting a motion for directed verdict"—the State in this case—" produces sufficient evidence to support a jury verdict in [its] favor, the motion must be denied." (*Howard*, at p. 630.)

The assertion that the trial court erred in denying a motion for directed verdict is the functional equivalent of a claim that there was insufficient evidence to support the jury's verdict. "Only if there was *no* substantial evidence in support of the verdict could it have been error for the trial court" to have denied the motion for directed verdict. (*Howard*, *supra*, 72 Cal.App.4th at p. 630.) In applying the substantial evidence standard, "[i]t is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact. Our authority begins and ends with a determination as to whether, on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, in support of the judgment. Even in cases where the evidence is undisputed or uncontradicted, if two or more different inferences can reasonably be drawn from the evidence this court is without power to substitute its own inferences or

deductions for those of the trier of fact, which must resolve such conflicting inferences in the absence of a rule of law specifying the inference to be drawn. We must accept as true all evidence and all reasonable inferences from the evidence tending to establish the correctness of the trial court's findings and decision, resolving every conflict in favor of the judgment." (*Id.* at pp. 630-631.) Substantial evidence is evidence of " ' "ponderable legal significance," ' ' "reasonable in nature, credible, and of solid value . . . ." ' " (*Id.* at p. 631.)

2. Aetna, Marshall, and Thrifty Oil

Todd relies on *Aetna, supra*, 170 Cal.App.3d 865 to support his assertion that the trial court erred when it denied his motion for a directed verdict. In *Aetna*, 38 homeowners, 8 insurance companies who were subrogated to the rights of other homeowners, and a non-profit sued the City of Los Angeles and its Department of Water and Power for damages from the 1978 Mandeville Canyon fire, which they alleged was caused by sparks from the defendants' power lines. Their complaint alleged negligence and inverse condemnation. (*Id.* at p. 872.) The case went to trial, and the question of damages for inverse condemnation was tried to a jury. The "[d]efendants offered no evidence on damages, relying instead upon cross-examination of [the] plaintiffs' expert witness and of the homeowners to convince the jury that [the] plaintiffs' damages were less than requested." (*Id.* at p. 876.) After a five-week trial, because the "defense failed to produce any evidence to contradict plaintiffs' case for damages," the trial court directed a verdict for damages based on the plaintiffs' evidence, and "dismissed the somewhat bewildered jury." (*Id.* at p. 872.)

Applying "special evidentiary rules applicable to eminent domain actions," the *Aetna* court concluded "the trial court properly directed a verdict for damages upon plaintiffs' evidence. Any deviation from the evidence by the jury would have been improper." (*Aetna, supra,* 170 Cal.App.3d at pp. 877, 878.) The appellate court stated a

"jury hearing a condemnation action may not disregard the evidence as to value and render a verdict which either exceeds or falls below the limits established by the testimony of the witnesses. [Citations.] The trier of fact in an eminent domain action is not an appraiser, and does not make a determination of market value based on its opinion thereof. Instead it determines the market value of the property, based on the opinions of the valuation witnesses. [Citation.]" (*Id.* at p. 877.) The *Aetna* court concluded that the "cases cited by [the] defendants to support their contention that the jury could arrive at a verdict at variance with the only evidence offered were not condemnation actions" and therefore inapposite. (*Ibid*.)

This case is distinguishable from *Aetna* since the State here presented its own evidence, including a valuation expert, and did not rely merely on its cross-examination of Todd's expert. Notwithstanding this distinction, Todd argues this case involves "the necessary and logical extension of *Aetna*" because the State's expert did not quantify the amount of severance damages or benefits. He also argues that the cases that the State relies on—*Marshall v. Department of Water and Power* (1990) 219 Cal.App.3d 1124 (*Marshall*) and *Thrifty Oil*, *supra*, 4 Cal.App.4th 469—are not persuasive. To the contrary, we are persuaded that both cases describe the proper rule to be applied here.

In *Marshall*, several property owners and insurance companies sued the City of Los Angeles and its Department of Water and Power for damages from the 1981 Chatsworth fire, which the plaintiffs alleged was caused by sparks from the defendants' downed power lines. The plaintiffs alleged a variety of causes of action, including inverse condemnation. The damages phase of the inverse condemnation claim was tried to a jury. Two sets of plaintiffs—the Ransbottom Limited Partnership (Ransbottom) and Ernest and Nelda Marshall (the Marshalls)—appealed. They argued, among other things, that the compensation awarded was inadequate as a matter of law. (*Marshall*, *supra*, 219 Cal.App.3d at pp. 1130, 1136, 1137, 1142.)

Ransbottom owned 58 acres in the fire area that it planned to develop; it claimed the fire damaged 50 percent of the property, including two houses, a stable, oak trees, other landscaping, and personal property. Ransbottom's valuation evidence included the testimony of its general partner, who valued uninsured damages at $549,700, and two experts (an arborist and a landscaper) who testified regarding the value of the trees and landscaping. (*Marshall*, *supra*, 219 Cal.App.3d at pp. 1142-1145) The Marshalls claimed uninsured losses totaling $168,299 for damages to furniture, books, jewelry, coins, and other personal property.[7] Their valuation evidence included the testimony of both property owners and a rare coin dealer. (*Id.* at pp. 1144-1145.) The public entity defendants cross-examined the plaintiffs and their experts, but presented no affirmative evidence regarding the value of the plaintiffs' losses. (*Id.* at pp. 1143-1145.) The jury awarded Ransbottom $1 and the Marshalls $1. (*Id.* at pp. 1137, 1145.) After Ransbottom moved for a new trial, its award was increased to $100,001 by means of additur. (*Id.* at p. 1145.) The trial court denied the Marshalls' motions for directed verdict and new trial. (*Id.* at p. 1145.)

On appeal, Ransbottom and the Marshalls argued that their awards were inadequate as a matter of law. The court disagreed and held that the jury was free to disbelieve the plaintiffs' evidence and award an amount less than the losses testified to by the plaintiffs, even though the public entity presented no contrary evidence. (*Marshall*, *supra*, 219 Cal.App.3d at p. 1145.) Citing *Aetna*, the property owners argued, as Todd does here, "that in an inverse condemnation suit, the plaintiff sets the ceiling of compensation and the government agency, through the presentation of counter evidence, sets the floor." (*Id.* at p. 1145.) They argued that the "government agency failed to set

[7] There are some discrepancies in the numbers in the opinion. For example, the court said the Marshalls claimed $165,728.59 in uninsured losses, and later said there was uncontradicted evidence their losses totaled $168,299. (*Marshall*, *supra*, 219 Cal.App.3d at pp. 1144, 1145.) For our purposes, we need not reconcile the numbers.

the floor because it presented no affirmative evidence about the value of the property lost; consequently, the jury could do nothing but award them the amount of losses to which [the plaintiffs] testified." (*Id.* at p. 1146.) The *Marshall* court observed that the "*Aetna* court did not discuss credibility as it apparently was not an issue." (*Ibid.*) The *Marshall* court distinguished *Aetna* procedurally, noting that the *Aetna* court was reviewing an order *granting* a motion for a directed verdict, while it was reviewing an order denying a motion for directed verdict.[8] The court also observed that cross-examination of the Marshalls indicated that there was "a triable issue of fact as to whether or not all their property was, in fact, in the house and the value of that property, and the motion is denied.' In other words, the [trial] court could not make the required findings to support a directed verdict." (*Marshall*, at pp. 1146-1147.)

The *Marshall* court did not disagree "with the validity of the rule defining the limits within which the jury must set compensation as stated in *Aetna*" and other cases. *Marshall*, *supra*, 219 Cal.App.3d at p. 1147.) The court stated, " '[W]here it appears that the opinion of a valuation witness is based upon considerations which are proper as well as those which are not, the testimony may be admitted and the *trier of fact shall determine its weight and credibility*. [Citation.]' [Citation.] Plainly stated, the trier of fact is not stripped of its role as the arbiter of a witness's credibility merely because the trial is one to set compensation in an inverse condemnation hearing. The jury must first determine whether or not the witness is credible and thereafter determine the weight to be given to the testimony. [Citation.]" (*Id.* at p. 1147.) The court noted that the "jury was

[8] We observe that like *Marshall*, the case before us is procedurally distinguishable from *Aetna* because we are reviewing a trial court order *denying* a motion for directed verdict. Appellate courts apply a de novo standard when reviewing the trial court's entry of a directed verdict, as was the case in *Aetna* (*Davis v. Farmers Ins. Exchange* (2016) 245 Cal.App.4th 1302, 1331, fn. 19) and a substantial evidence standard when reviewing an order denying a motion for directed verdict (*Howard*, *supra*, 72 Cal.App.4th at pp. 630-631), as was the case here and in *Marshall*.

instructed that it could disregard the testimony of a witness that it did not believe." (*Ibid.*) The court held that the defendants' "failure to present affirmative evidence, in effect, set a floor of $0. By awarding the token $1, the jury was sending an unmistakable message—it did not believe the testimony either of Ransbottom or the Marshalls. When the [trial] court offered additur of $100,000 to Ransbottom and not the full amount testified to during trial, it was sending the same message." (*Ibid.*, fn. omitted.) In another context, the court found "most telling" the circumstance that the jury returned favorable verdicts for the other plaintiffs, some for the exact amount claimed. (*Id.* at p. 1148.)

In *Thrifty Oil*, the second case the State relies on, the redevelopment agency of the City of Pomona exercised its eminent domain power over a gas station owned by Thrifty Oil. The issues to be decided by the jury were the value of the property taken and the value of business goodwill, which is recoverable in an eminent domain action (§ 1263.510). Although the case did not involve a motion for directed verdict, it is instructive regarding valuation evidence in an eminent domain proceeding. As for the fair market value of the property, the property owner's expert opined that the property was worth $950,000; the city's expert opined that it was worth $5,000; a court-appointed expert valued it at $125,000; and the jury awarded $136,200 for the taking. (*Thrifty Oil*, *supra*, 4 Cal.App.4th at pp. 473-474.)

On appeal, the property owner, Thrifty Oil, challenged the sufficiency of the evidence to support the jury's finding regarding the value of the property. (*Thrifty Oil*, *supra*, 4 Cal.App.4th at pp. 473-474.) The appellate court observed that the "experts disagreed as to the significance of many factors, such as the declining sales of gasoline, the financial information which indicated the station was losing money, the poor location of the station, traffic counts, the station's self-service facilities, contamination, the surrounding environment and the costs for getting rid of the contamination, i.e., the remediation costs." (*Id.* at pp. 473-474, fn. omitted.) The court noted that "all of these

factors were presented to the jury for its consideration" and concluded that the evidence amply supported the "the jury's conclusion that the fair market value of the property was $136,200." (*Id.* at p. 474.)

As for the value of goodwill, the property owner's expert in *Thrifty Oil* valued goodwill lost at $125,000. Before trial, the city's expert valued it at $80,000. At trial, the city took the position that the property owner had not demonstrated it was entitled to damages for loss of goodwill and decided not to present any expert testimony on the issue. Thus, its appraiser's valuation was not before the jury. (*Thrifty Oil*, *supra*, 4 Cal.App.4th at p. 475.) The jury awarded $67,500 for goodwill. On appeal, the property owner cited *Aetna*, argued that the only evidence of valuation was that of the property owner's expert, and asserted that the jury was limited to that value. (*Id.* at pp. 475-476 & fn. 14.) The appellate court disagreed. Citing *Marshall*, it stated that the "jury is not precluded from evaluating the credibility of witnesses." (*Id.* at p. 476.) The court also observed that the city's expert had assumed entitlement to goodwill had been shown and that remediation had no effect on the value. At trial, however, entitlement to damages for loss of goodwill was disputed, and "[a]lthough the jury did not totally accept" the city's position, the evidence also supported a finding that no goodwill was proven. (*Id.* at p. 477.) The court held that the city had the prerogative of presenting its case in this fashion and affirmed the judgment. (*Id.* at pp. 476-477, 480.) The court also stated that by proceeding in this manner the city had established "as a floor the sum of $0 as the value of goodwill." (*Id.* at p. 476.)

Todd describes *Marshall* and *Thrifty Oil* as "outlier cases" and urges us to follow *Aetna* instead. We are not persuaded. *Marshall* and *Thrifty Oil* have never been overruled and are still good law. In our view, they also state the better rule. They acknowledge the role of the jury in assessing witness credibility and that the jury may believe all, part, or none of a witness's testimony. (Evid. Code, § 780; see also CACI No. 107.) They acknowledge that in evaluating expert witness testimony, the jury may

consider not only the ultimate dollar value opinions of the witnesses, but also the factors the experts considered as the basis for their conclusions. (*Zuckerman*, *supra*, 189 Cal.App.3d at p. 1135; *Public Works v. Jarvis*, *supra*, 274 Cal.App.2d at pp. 226-227 & fn. 6.) Finally, *Marshall* and *Thrifty Oil* are consistent with the rule from *Public Works v. Jarvis* that the jury cannot render a verdict that is "higher or lower than 'that shown by the testimony of the witnesses.' " (*Public Works v. Jarvis*, at p. 226.)

3. Todd's Other Arguments

Todd argues that public policy supports applying the *Aetna* rule here because that rule incentivizes fair dealing by the State and other public entities. He contends that allowing a public entity to refuse to separately quantify severance damages and benefits as Brigantino did "incentivizes the government to withhold its appraiser's actual evaluation or to instruct its appraisers not to separately quantify damages and benefits in the first place" and potentially penalizes property owners for exercising their constitutional right to a jury trial on the question of just compensation. Todd points to the facts in *Thrifty Oil*. There, the city's expert, assuming entitlement to damages, valued the loss of goodwill at $80,000; the property owner's expert valued loss of goodwill at $125,000; and the jury awarded $67,500, less than both appraisals. (*Thrifty Oil*, *supra*, 4 Cal.App.4th at p. 475.) Todd argues the "owner received less than what it *and* the public agency reasonably believed was just compensation. This is exactly the type of situation the law should abhor." The property owner in *Thrifty Oil* argued that the city's attorney had committed misconduct by concealing information about its case. The court disagreed. It held that the city did not conceal information; that it had reasonably examined the evidence and concluded no goodwill existed, and, therefore had the prerogative of presenting its case in that way. (*Id.* at p. 477 & fn. 16.) *Thrifty Oil* also cited two cases in which the court affirmed verdicts for less than any experts' testimony. (*Id.* at p. 477, citing *People ex rel. Dept. Pub. Works v. Bond* (1964) 231 Cal.App.2d 435

[verdict less than experts' opinions supported by the evidence] and *Sacramento etc. Drainage Dist. v. W.P. Roduner Cattle etc. Co*. (1968) 268 Cal.App.2d 199 [jury entitled to reject both experts and use other competent evidence to support verdict].) Todd does not acknowledge these points and in the next paragraph admits he "has no evidence that Caltrans intentionally withheld valuation numbers in this case." We therefore reject his public policy argument.

Todd contends that the court's failure to follow *Aetna* will effectively overrule the statutory joint burden of proof in section 1260.210, which provides that neither party in an eminent domain case has the burden of proof on the issue of just compensation. He also contends that applying *Aetna* will protect both sides from runaway juries. These broad brush arguments are unsupported by the facts here. The trial court properly instructed the jury with CACI No. 3514 that neither side had the burden of proving the amount of just compensation. Nothing in the record indicates that the jury failed to follow that instruction. In addition, there was no runaway verdict. The jury awarded severance damages in an amount that fell between the parties' expert valuations. The jury agreed with Todd's expert that there were no benefits, hence no offset. He could not have obtained a better result on that issue. Thus, this case does not provide a factual basis to address Todd's runaway jury thesis.

4. Substantial Evidence Supports the Trial Court's Denial of the Motion for Directed Verdict

Under this heading, we address Todd's claims that the evidence was speculative and conjectural and analyze the sufficiency of the evidence to support the trial court's denial of the motion for directed verdict. Todd argues that the trial court should have granted his motion for directed verdict because Brigantino's testimony that benefits offset damages to the remainder was speculative and did not assist the jury. Todd argues: "Brigantino testified that he could not put numbers on the severance damages or the alleged benefits to the property because he would have to speculate to do so." But the

statements Todd cites are from his cross-examination regarding valuing *benefits*. Brigantino said that evaluating benefits was a "hard number to come up with. That's a speculative number"; that it was hard to come up with a specific number. Todd does not direct us to any testimony that supports his assertion that Brigantino testified that it would be speculative to assign a number to severance damages. Arguably, Brigantino did quantify the damages. He said the loss of view and visibility diminished the value of the property "slightly," but concluded that detriment did not impact the dollar value of the properties, which he opined was still $12 per square foot after the Project was built. Todd's expert testified that in comparing properties, appraisers may make quantitative (adjusting by a numerical percentage) or qualitative (adjusting based on classifying property as inferior, similar, or superior, etc.) judgments and that both methods were acceptable.

Todd further contends that the trial court should have granted his motion to strike and his motion for directed verdict because Brigantino's testimony regarding benefits was wholly unsupported and conjectural. Todd relies on two points. First, he complains that there was no evidence quantifying noise reduction by the sound wall. Nicolaou testified regarding the anticipated reductions in noise based on noise studies that were done before the Project was built. Neither party conducted noise studies after the Project was built. Since this was an eminent domain case, neither party had the burden of proof on just compensation (§ 1260.210, subd. (b)), and both were entitled to rely on the state of the evidence. And Todd vigorously cross-examined Brigantino on this point. Second, Todd complains that the evidence of alleged benefits from improved traffic circulation was entirely conjectural. We disagree. Both sides presented extensive evidence, including several aerial and street view photographs, describing the original interchange and new undercrossing at Russell and Espinosa Roads, as well as the new interchange at Sala Road. Brigantino testified that he was familiar with the area and had driven by the Two Parcels hundreds of times. The jury heard detailed testimony describing the location

of the Two Parcels in relationship to the Freeway access points both before and after the Project was built. Given this evidence, there was nothing conjectural about Brigantino's testimony that the Two Parcels benefitted from improved access after the project was built.

In sum, Todd is rearguing the evidence on appeal. But it is not our role under the substantial evidence standard of review "to weigh conflicts and disputes in the evidence; that is the province of the trier of fact." (*Howard*, *supra*, 72 Cal.App.4th at p. 630.) Moreover, even if the trial court erred in admitting evidence regarding the benefits of the project, the error was not prejudicial. The jury did not find the State's evidence persuasive and found there were no benefits from the Project. As we have said, Todd could not have obtained a better result on the issue.

Applying our standard of review on directed verdict, we note that the experts disagreed on the question whether the Two Parcels benefitted from the Project. Since there was a substantial conflict in the evidence on this question, the trial court did not err when it denied the motion for directed verdict. (*Howard*, *supra*, 72 Cal.App.4th at p. 629 [trial court "may not grant a directed verdict where there is *any* substantial conflict in the evidence"].) In addition, there was also substantial evidence that would have supported a verdict in the State's favor. (*Id.* at p. 630.) As we have noted, the evidentiary rules permitted Brigantino to testify that the benefits of the Project outweighed severance damages, so that severance damages were zero. Brigantino discussed the factors that supported his valuation of the properties both before and after the Project was built. He selected four comparable properties and showed the jury a chart that compared the features of those properties to the features of the Two Parcels. He described a myriad of uses that are permitted by the zoning that applies to the Two Parcels and concluded that the walls, which gave a protected feel to the properties, would benefit some uses and not others. He thought the improved access to the west and to the Monterey Peninsula from the new undercrossing, and the improved access to the Two Parcels for southbound

Freeway traffic were beneficial. He also said the neighborhood was predominantly residential and blighted.

To avoid a directed verdict, the State's had to present more than a mere scintilla of evidence. (*Newing*, *supra*, 15 Cal.3d at p. 359.) It clearly did so. And although the jury ultimately did not credit Brigantino's testimony regarding benefits, based on the evidence described above, we conclude the State produced sufficient evidence to support a jury verdict in its favor. The trial court, therefore did not err when it denied Todd's motion for directed verdict. (*Howard*, 72 Cal.App.4th at p. 630.)

E. Sufficiency of the Evidence to Support the Jury's Verdict

Todd challenges the sufficiency of the evidence to support the jury's verdict on severance damages. He argues that since Brigantino did not assign a dollar value to severance damages, there were no other numbers the jury could have used except the valuation numbers Nicolaou provided.

We described the substantial evidence standard of review in our discussion of the motion for directed verdict. Although the issue is slightly different here—whether there was substantial evidence to support the jury's verdict—the test is the same.

As with any witness, the jury was entitled to weigh each expert's testimony and believe or disbelieve all or some of their testimony. As noted *ante*, the jury was entitled to weigh not only the experts' ultimate conclusions regarding value, but also the factors they relied on in reaching their opinions. (*Zuckerman*, *supra*, 189 Cal.App.3d at p. 1135.) The jury was instructed that severance damages can "be based on any factor resulting from the project that causes a decline in the fair market value of the property." As we have stated, the relevant factors include the extent and value of the loss of visibility from the Freeway, access to the Freeway, and loss of view of farmland to the west; the nature of the surrounding neighborhood, and whether it included a gateway overlay or was blighted; the myriad of permitted uses; and the likelihood of

commercial/retail development that would rely on highway identity, as opposed to some other use that would not.

If the trial court admits evidence of comparable sales, as it did here, the "jury then, on the basis of all the evidence, determines the extent to which any differences between the condemned property and the comparable property affect their relative values." (*Los Angeles v. Retlaw Enterprises, Inc*. (1976) 16 Cal.3d 473, 482.) The degree of comparability is a question of fact for the jury. (*County of San Luis Obispo v. Bailey* (1971) 4 Cal.3d 518, 525.) "[T]he essence of comparability is recent and local sales '*sufficiently* alike in respect to character, size, situation, usability, and improvements' so that the price 'may fairly be considered as *shedding light*' on the value of the condemned property. . . . [I]t is then ultimately for the jury to determine the extent to which the other property is in fact comparable. [Citation.]" (*County of Glenn v. Foley* (2012) 212 Cal.App.4th 393, 401.) The jury was instructed with CACI No. 3515 as follows: "You may find the same market value testified to by a witness or you may find a value anywhere between the highest and lowest values stated by the witnesses." The jury may have rejected one or more of either expert's comparable sales, in whole or in part. It may have disagreed with the experts as to the degree of comparability. Since the jury was entitled to evaluate the factors that each expert relied on, and make its own determination regarding the degree of comparability, its verdict was not limited to the dollar values that Nicolaou testified to.

The jury may have thought Brigantino had better knowledge of local property values, since he had greater ties to the county. While the jury did not credit Brigantino's testimony regarding the benefits of the Project, the jurors may have found aspects of his testimony regarding severance damages credible. Nicolaou's testimony focused on the value of the Two Parcels for commercial development as a gas station, restaurant, fast food, or retail establishment that serves both highway travelers and local residents. The jury may have been persuaded that Nicolaou's valuation was inflated based on the

character of the neighborhood, the wide variety of potential uses for the property, the distance from the commercial hub at Boronda Road, and Brigantino's testimony that the area was blighted, all of which reduced the likelihood that it would be developed in the manner that Nicolaou envisioned.

Brigantino testified that net severance damages were zero. Nicolaou testified that severance damages for both parcels combined were $384,300. The jury found severance damages of $133,762 for both parcels combined. The verdict here was not "higher or lower than 'that shown by the testimony of the witnesses' " (*Public Works v. Jarvis*, *supra*, 274 Cal.App.2d at p. 226) and it was within the range of values testified to by the experts. (*Vaquero Farms*, *supra*, 58 Cal.App.4th at pp. 904-905; see also *First Baptist*, *supra*, 1 Cal.App.3d at p. 410.) For all these reasons, we conclude there was substantial evidence that supported the jury's verdict.

III. DISPOSITION

The judgment is affirmed.

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Greenwood, P.J.

WE CONCUR:

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Bamattre-Manoukian, J.

_____
Danner, J.

The People ex rel. Department of Transportation v. Jarvis
No. H043737